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BEFORE THE ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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SEP 3 2010

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IN THE MATTER OF THE FORMAL
COMPLAINT OF CHARLES J. DAINS AGAINST
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

RESPONSE TO MOTION TO STRIKE

1 The estate of Charles J. Dains hereby responds to Rigby Water Company's ("Rigby's")
2 Motion to Strike Testimony of David C. Iwanski ("Motion"). The Motion is meritless and
3 should be denied.

4 **I. THE COMMISSION IS NOT BOUND BY THE RULES OF EVIDENCE**

5 Rigby's reliance on the Arizona Rules of Evidence is misplaced. The Commission's
6 Rules of Practice and Procedure clearly state that the Commission is not bound by the Rules of
7 Evidence: "In conducting any investigation, inquiry or hearing, neither the Commission nor any
8 officer or employee thereof shall be bound by the technical rules of evidence ..."¹

9 Rigby's attorneys are experienced Commission practitioners, so it is difficult to
10 understand why they would devote so much time to a motion to strike. They well know that the
11 Commission almost never grants such motions. Based on his 28 years of practicing before state
12 and federal utility commissions, including 16 years before this Commission, undersigned counsel
13 has very rarely seen motions to strike testimony granted. When they have been granted, they
14 have usually been based on technical grounds such as missing a filing deadline or otherwise
15 failing to comply with a procedural order.

¹ A.A.C. R14-3-109(K).

1 As the cases and treatises cited by Rigby show, the purpose of the cited Rules of
2 Evidence is to protect jurors from prejudice and undue influence. This not a concern here; the
3 Commission's cases are not heard by jurors. Rather, this case will be heard by an experienced
4 and capable Administrative Law Judge who will be able to properly sort through the evidence
5 and give it the weight she believes it deserves.

6 **II. MR. IWANSKI'S TESTIMONY IS TYPICAL COMMISSION TESTIMONY**

7 Mr. Iwanski's testimony is no different than typical pre-filed testimony that the
8 Commission sees every day. It is a mixture of personal experience, background for the case,
9 discussion of the other party's arguments, simple calculations, and policy recommendations.

10 Mr. Iwanski presents and discusses a number of documents that are relevant to this case,
11 including the 1999 Main Extension Agreement ("MXA") and the 1998 letter from Mr. Wilkinson
12 to Mr. Dains. He testifies about his personal experience trying to ascertain whether the MXA
13 was ever filed with the Commission. He discusses Rigby's answer to the Dains' complaint and
14 addresses specific claims. He provides background on the Avondale condemnation proceeding,
15 of which he has personal knowledge. He calculates the amount of refunds made by Rigby,
16 versus what was promised. He concludes by telling the Commission specifically what relief the
17 Dains estate requests. None of this testimony is unusual or improper.

18 **III. MR. IWANSKI IS QUALIFIED TO PRESENT HIS TESTIMONY**

19 Mr. Iwanski is thoroughly qualified to offer expert testimony. As his testimony discloses,
20 he is the Water Resources Director for the City of Goodyear and has significant prior experience
21 with municipal water utilities. He is also very familiar with private water utilities and
22 development issues. He testifies that he served for ten years on the Board of Directors of the
23 Arizona Utilities Association (now the Arizona Investment Council), five years on the Valley
24 Forward Water Resources Committee, and ten years as co-chair of the WESTMARC Water
25 Resources Committee.

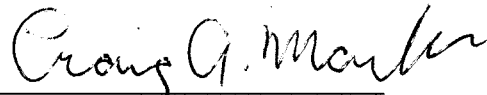
1 He is also very familiar with Avondale's attempts to acquire Rigby. He testifies that he is
2 Chairman of the Avondale Planning and Zoning Commission and that he has personal
3 knowledge concerning Avondale's planned Rigby acquisition.

4 That Rigby disagrees with some portion of Mr. Iwanski's testimony is no basis to strike
5 his entire pre-filed testimony. Rigby has already taken advantage of its opportunity to present
6 contrary testimony and will have the opportunity to cross-examine Mr. Iwanski.

7 **IV. CONCLUSION**

8 Rigby's Motion should be denied. There is no reason to strike Mr. Iwanski's testimony.

9 RESPECTFULLY SUBMITTED on September 3, 2010.

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